

REMARKS

Entry of the preceding amendments and allowance of Applicant's claims are respectfully requested in view of the preceding amendments and the following comments.

With all due respect, issue is respectfully taken with the unsupported and unsupportable allegation:

The recitation of "toothbrush" fails to define over the structure of the prior art and pertains only to the intended use thereof.

As a matter of fact, the term "toothbrush" is not merely an indication of intended use; it has a clear identifiable structure, which is recognized by anyone of at least ordinary skill in the art. Moreover, such structure is one which is readily distinguishable from that of Baumgartner's "small brush adapted for use in applying lacquer and the like" (column 1, lines 2 & 3), as well as Cansler's paintbrush. Although such should not have been necessary, Applicant has further clarified the distinction of the claimed subject matter by emphasizing the properties of the claimed article in a manner which would be readily fully appreciated by anyone of at least ordinary skill in the art from the terminology of the originally presented claims.

By reference to "Webster's New World Dictionary", Third College Edition, page 1409 (copy herewith), 1989, toothbrush is defined as:

A brush for cleaning the teeth and stimulating the gums.

The rejection of claims 1 to 3 "under 35 U.S.C. §103(a)" as being unpatentable over Baumgartner... in view of Cansler..." is respectfully traversed. As this ground of rejection is based on a combination of references, the first critical determination is to point out that disclosure in each of the references which would lead one of ordinary skill in the art to which the claims are directed to consider such references when faced with the problem solved by the claimed invention. Applicant submits that absolutely nothing is found in either of the references that would even remotely attract the attention of one faced with the problem addressed by Applicant's invention. The purposes of each of the references are remote from that addressed by Applicant, who would have no reason whatsoever to consider either reference disclosure for his purpose. In addition, there is no disclosure in either of the references that would lead anyone of ordinary skill in the art to combine any particular teachings thereof for any purpose whatsoever. Even attempting to combine these references is nothing more than an attempt to reconstruct Applicant's claimed subject matter retrospectively and solely in view of Applicant's own teachings. Such is not justifiable under 35 U.S.C. §103(a).

Applicant has further added the particular range (2.8 to 3.5mm) expressly referred to on page 4 of the Office Action of March 26, 2004. As this range has thus already been considered by the Examiner, insertion thereof in claim 1 should not be regarded

as a new issue.

Issue is also respectfully taken with the following position:

The patent to Cansler... has been used to provide a teaching of using PBT as a bristle material (column 4, line 39) in a brush of similar utility as Baumgartner and further in that it suggests the equivalence of nylon... and PBT.


Even if (without admission) nylon and PBT were equivalent for Baumgartner's and Cansler's purposes, such would not in any way establish their equivalence for the entirely different purpose of Applicant's claimed invention. The nature of the bristles useful for toothbrushes is completely non-analogous to those of the applies art. No reference teachings are found that would equate bristles useful for toothbrushes as equivalent to those of the reference purposes.

Reconsideration of the Restriction Requirement is respectfully requested. Every claim to a new product requires, as an essential part of the invention, a method of making that product. A method of making is thus an integral part of the same invention as the product itself, and is thus properly claimable in the same application. As the claims to the product are now in condition for allowance, the single claim to the method of making that product is similarly patentable in the same application, and action toward that end is respectfully solicited.

All objections and rejections having been addressed, it is respectfully submitted that claims 1-3 are now in condition for

allowance and a notice to that effect is earnestly solicited. If any issues remain to be resolved, the Examiner is cordially invited to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

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